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REMARKS

Claims 79-90 are pending in the subject application.

Restriction Requirement Under 35 U.S.C. §121

The April 3, 2007 Office Action imposes a restriction requirement under 35 U.S.C. §121 among the following four (4) groups of claims:

- I. Claims 80 and 81, drawn to a method of generating a tissue in a subject, wherein the tissue is mesenchymal tissue, comprising administering untransformed STRO1^{bright} cells (class 424, subclass 577);
- II. Claims 82 and 83, drawn to a method of generating a tissue in a subject, wherein the tissue is non-mesenchymal tissue, comprising administering untransformed STRO1^{bright} (class 424, subclass 577);
- III. Claim 86, drawn to a method of generating a tissue in a subject, comprising administering transformed STRO1^{bright} (class 424, subclass 577); and
- IV. Claims 87 and 89, drawn to a method of generating a tissue in a subject, wherein the tissue is bone marrow, comprising administering untransformed STRO1^{bright} cells (class 424, subclass 577)

In the April 3, 2007 Office Action the Examiner stated that claims 79, 84, 85, and 90 link the inventions of groups I-IV. The Examiner further stated that the restriction requirement between the linked inventions is subject to non-allowance of the linking claims (indicating in error claims 46-50 and 54-58 or 62-66 and 70-74 rather than claims 79, 84, 85, and 90). The Examiner further stated that upon allowance of the linking claim(s) the restriction requirement as to the linked inventions would be withdrawn and any claim(s) depending from or otherwise including

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all the limitations of the allowed claim(s) would be entitled to examination in the subject application.

In response to the restriction requirement, applicants elect with traverse, group I, i.e. claims 80 and 81, drawn to a method of generating a tissue in a subject, wherein the tissue is mesenchymal tissue, comprising administering untransformed STRO1^{bright} cells.

Applicants note that the Examiner has characterized claim group II (claims 82 and 83) as directed to "a method of generating a tissue in a subject, wherein the tissue is non-mesenchymal tissue" (emphasis added). Applicants note, however, that claims 82 and 83 are directed to a method involving non-haemopoietic tissue, i.e. a method of generating mesenchymal tissue, not non-mesenchymal tissue. Therefore, applicants request that the Examiner reconsider and withdraw the restriction requirement as to group II.

The Examiner also stated that groups I and IV are different methods and are different with respect to ingredients, method steps and endpoints and require non-coextensive searches. The Examiner asserted that each method is patentably distinct. In response, applicants note that all of the claim groups are classified in the same class and subclass. Moreover, all of the claims are directed to a method of generating a tissue in a subject administering a STRO1^{bright} cell. Thus, groups I and IV are not directed to subject matter that is different in any substantial respect and the search would be coextensive, not non-coextensive.

Applicants also note that under M.P.E.P. §803, the Examiner must

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examine the application on the merits, even though it includes claims to distinct inventions, if the search and examination of an application can be made without serious burden. There are two criteria for a proper requirement for restriction, namely (1) the invention must be independent and distinct; AND (2) there must be a serious burden on the Examiner if restriction is not required.

Applicants maintain that there would not be a serious burden on the Examiner if restriction were not required. A search of prior art with regard to any one of groups I-IV would be carried out in the same class and subclass as each other group and therefore should identify art for each group. Thus a search of prior art with regard to group II should identify art related to group I. Since there is no serious burden on the Examiner to examine groups I-IV in the subject application, the Examiner should withdraw the restriction requirement and examine all of claims 79-90.

In summary, applicants understand that the Examiner will be examining all of the linking claims and to the extent such claims are not deemed patentable applicants respectfully request that the Examiner reconsider and withdraw the restriction requirement and examine all of the pending claims on the merits.